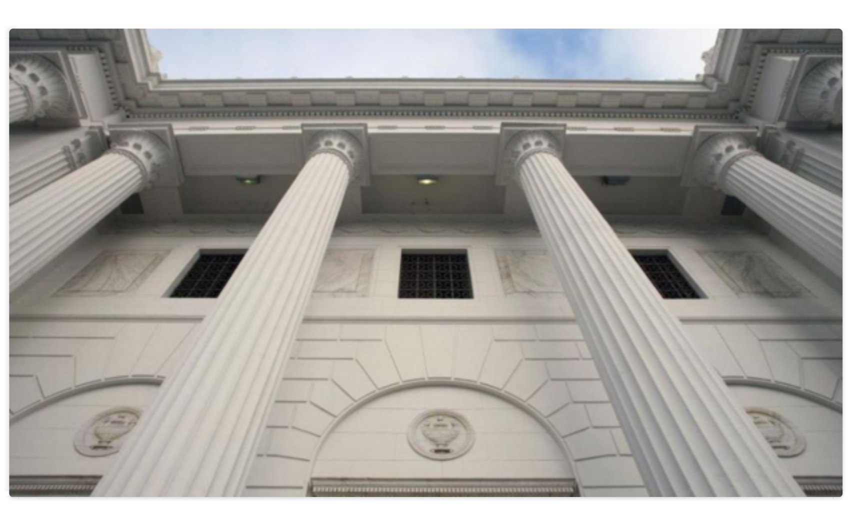
Internet Archive Opposes Publishers in Federal Lawsuit

Posted on September 3, 2022 by Peter M. Routhier



On Friday, September 2, we filed a brief in opposition to the four publishers that sued Internet Archive in June 2020: Hachette Book Group, Harper Collins Publishers, John Wiley & Sons, and Penguin Random House. This is the second of three briefs from us that will help the Court decide the case.

Read: Hachette v. Internet Archive – Internet Archive's Opposition to Motion for Summary Judgment

As many of you know, these four publishers sued the Internet Archive to try to shut down our digital lending program. The lawsuit has been ongoing for over two years now. In addition to the papers that have gone in so far, there will be one more opportunity, later this fall, for the parties to file arguments with the court. These will be the "reply" briefs. At that point, the filing of papers tends to cease. The Court will then decide whether or not it wants to hear from the parties in person–through "oral argument." After that, the Court will make a decision on this set of briefs. That could resolve the case in its entirety, or it could lead to a trial and/or appeal. In the end, the lawsuit could take some years to resolve.

Our opposition brief responds to the arguments raised in the publisher's motion for summary judgment. There, some of the world's largest and most-profitable publishers complained that sometimes "Americans who read an ebook use free library copies, rather than purchasing a commercial ebook." They believe that copyright law gives them the right to control how libraries lend the books they own, and demand that libraries implement the restrictive terms and conditions that publishers prefer.

Our opposition brief explains that "[p]ublishers do not have a right to limit libraries only to inefficient lending methods, in hopes that those inefficiencies will lead frustrated library patrons to buy their own copies." The record in this case shows that publishers have suffered no economic harm as a result of our controlled digital lending–indeed, publishers have earned record profits in recent years. "[D]igital lending of physical books costs rightsholders no more or less than, for example, lending books via a bookmobile or interlibrary loan. In each case, the books the library lends are bought and paid for, ensuring that rightsholders receive all of the financial benefits to which they are entitled."

The future of library lending is at stake in this lawsuit. We will keep fighting to prove that copyright does not stand in the way of a library's right to do what libraries have always done: lend the books it owns to one patron at a time.

Posted in News | Tagged CDL, controlled digital lending | 12 Replies

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12 thoughts on "Internet Archive Opposes Publishers in Federal Lawsuit"

Ken Fisher
September 3, 2022 at 1:41 pm

[quote]
There, some of the world's largest and most-profitable publishers complained that sometimes "Americans who read an ebook use free library copies, rather than purchasing a commercial ebook."
[quote]

The publishing industry seems to make the exact same assumption the music industry does: if someone cannot obtain their product for free, they instantly and without question immediately go out and buy it.

I hope that counsel for IA is going to question this assumption in court. It will be interesting to hear how these publishers attempt to prove that someone reading a library book (digital or otherwise) means that the publishers are the poorer for it.

[quote]
The record in this case shows that publishers have suffered no economic harm as a result of our controlled digital lending–indeed, publishers have earned record profits in recent years.
[/quote]

This is not surprising. Digital lending is a *great* form of advertising for publishers.

As far as I can tell, there is no difference between CDL and browsing in a bookstore. Frankly, I am fascinated by the amount of energy these four publishers are putting into trying to prevent people from test-driving books in an age where being able to test-drive something before purchasing it is largely taken for granted.

In any case, I am grateful to IA for revealing the names of the four publishers who filed the suit. Admittedly, most of my book purchases are used books, but nonetheless, I will be at pains not to hand any of the four publishers another dollar.

CopySHITE
September 3, 2022 at 4:07 pm

"[p]ublishers do not have a right to limit libraries only to inefficient lending methods, in hopes that those inefficiencies will lead frustrated library patrons to buy their own copies."

It reminds me of this: https://torrentfreak.com/you-cant-defend-public-libraries-and-oppose-file-sharing-150510/

"Yes, it is different. It differs in efficiency. Where public libraries can educate one citizen at a time from one original book, file-sharing has the potential to educate millions at a time with the same effort spent."

The only "inefficient" similarity between physical and digital libraries is that in CDL, you have to wait till someone returns the book back–either via a software and clicking "return" or wait out the 14-day time limit. That can be a frustration to buy a book if there are numerous people wanting it. Heck this can lead to more sales to increase the lending limit (so if 100 people wanted to borrow a book and the CDL only has 1 of a particular book, patrons can just buy the book and donate it to the library to help others, increasing the sales). How is this a lost sale?

So the publishers wanted a system that people to borrow a book must drive to a library, and not cheat the physical limitation that you can borrow and return immediately without travel. That is problematic for anyone having disabilities getting there, and also needless gas to drive there.

This is very stupid. This is another example of a case where copyright holders are attacking even ones that are SUPPORTING them, like the betamax case: https://en.wikipedia.org/wiki/Sony_Corp._of_America_v._Universal_City_Studios,_Inc. where filmmakers actually like this, and the fact that Netflix recently now penalizing password sharing with a fee, despite them earlier ENCOURAGE it, and also the ACE hated this as well: https://torrentfreak.com/global-anti-piracy-coalition-takes-on-password-sharing-191031/ .

aho
September 3, 2022 at 6:36 pm

Great !

Diane D Dowell
September 5, 2022 at 5:00 pm

Internet Archive ORG as the name clearly suggest is an archival facility not a Publishing House.

As Internet Archive ORG do not holds copy rights for Publishing or New Publications. But, At the same time no one can hold it's back to share archived versions of old Publications among it's users.

Monopoly is something like I want, I force you but only this Auto Mobile only.
But, you can only drive it.
You can not repair-it, you can not fix-it, you can not give someone as a gift or you can not re-sell it.

Luke
September 6, 2022 at 2:19 am

There is an obvious counter to this: that is for people to STOP BUYING BOOKS from Hachette Book Group, Harper Collins Publishers, John Wiley & Sons, and Penguin Random House entirely. Read it free-or not at all.

This is what stopped RIAA filesharing lawsuits. After new of small children and grandparents being sued broke, tens of millions stopped buying any music whatsoever and CD sales plunged. In response the RIAA halted the lawsuits. A pledge to consume free or not at all is entirely legal and can sink copythug publishers. Same idea as overwriting Microsoft Windows with Linux-MS cannot whine about copyright or patents when their work is thrown away.

bks2
September 6, 2022 at 3:44 am

Digital libraries are a goldmine. My world (and mind) has been opened to SOOOO many new ideas by just browsing through various books that I would never have found in a traditional library. First, because they probably would not have the book in their collection, and second, because I would never spend that much time in the aisles looking at that many different books, and third, because a casual search of a subject of title often brings up other books that I never thought of or knew existed. Looking at one leads to others, and on and on. So kudos to IA (and others) for providing such a fantastic service.

Because such a wide variety of books is so readily available, my approach to reading is completely different now — I just read the introductions to get the general idea of the subject, especially if its something totally new to me. If it really grabs me, I'll read more, but I only read maybe 1 in a hundred books. Otherwise, I may just peruse the preface or introduction and learn a lot from them before going on to the next one that catches my interest. Its like getting lost in a knowledge maze!

As for the publishers, they are under increased pressure as their control of information and the publishing industry and physical books are headed down the path of the dodo bird (and, unfortunately, similar to what movie theaters have been facing). They have been used to having total control of what gets published — what the world can see and the how stories are told for minds to consider. With the internet providing easier access to (all kinds of junk and) facts and information that they might not deem worthy, they're losing the battle for control of what people can see and learn about, so I would expect them to fight hard to not lose that esteemed position of influence — and power (and money). This is especially true with the current trend toward censorship, book bans and such, making libraries such as IA even more important to a free and informed society.

I was curious and had no idea, so I asked my local public library how many books they had in their collection — they said 30,000. IA and other online libraries have millions, so I agree with the person who commented how the digital libraries are so much more efficient. No book transfers, searches, interlibrary loans and delays, etc. During the pandemic, I started using digital libraries my library offered, and it was great. I wonder if publishers are going to fight the trend in local libraries as well. I think that train has left the station and they need to get on board.

Funny enough, I'm one of your newest members — I just signed up today — and the first thing I read is about the lawsuit. Keep up the good work and I look forward to many years of exploring, borrowing, and learning!

marasahh9
September 6, 2022 at 7:01 am

Because the Internet Archive has virtually non-existent moderation or oversight. Anybody can upload anything, and it can stay there for a long time, despite multiple comments and objections that whatever it is is not really public domain.

People will upload things that may be public domain in their place of original and/or wherever the uploader is, even if they are not public domain in the US, which is what counts, as that's where IA's servers are.

aho
September 7, 2022 at 8:52 am

Great !
You Can

Kaleberg
September 9, 2022 at 12:10 am

Publishers are publishing fewer and fewer books, and they are losing control of the genres. The romance genre, the largest single genre and a huge chunk of overall book sales, has been moving to Amazon and self publishing. People find authors they like and stick with them. This means that those self publishing authors can sell books for $1.99 or $3.99 and still make money since they keep a higher percentage of the sale price. I wouldn't be surprised if authors in other genres follow, and why not?

JJA
September 9, 2022 at 7:28 am

Plz plz win the lawsuit because I can't imagine a world without the Internet Archives/ Open Library. I don't know what the publishers are grousing about because so many times I have loved the book borrowed from the Open Library and then gone and purchased a physical copy of it.

aho
September 9, 2022 at 2:00 pm

thats Ok !

haha
September 14, 2022 at 12:46 am

The only "inefficient" similarity between physical and digital libraries is that in CDL, you have to wait till someone returns the book back–either via a software and clicking "return" or wait out the 14-day time limit. That can be a frustration to buy a book if there are numerous people wanting it. Heck this can lead to more sales to increase the lending limit (so if 100 people wanted to borrow a book and the CDL only has 1 of a particular book, patrons can just buy the book and donate it to the library to help others, increasing the sales). How is this a lost sale?

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